Careful Courier Services, Inc. d/b/a King Courier and International Longshore and Warehouse Union, AFL–CIO. Case 20–CA–31166–1

April 4, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND SCHAUMBER

The General Counsel seeks default judgment in this case on the ground that the Respondent has failed to file a timely answer to the complaint. Upon a charge filed by the Union on April 7, 2003, an amended charge filed on April 15, 2003, a second amended charge filed on May 23, 2003, and a third amended charge filed on June 25, 2003, the General Counsel of the National Labor Relations Board issued a complaint on October 28, 2004,[1] against King Courier, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served with copies of the charge, as amended, and the complaint, the Respondent failed to file a timely answer.

On December 6, the General Counsel filed a Motion for Default Judgment with the Board. On December 9, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent, on December 30, filed a response to the Board's Notice to Show Cause and included an answer to the complaint.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within the 14 days from service of the complaint, unless good cause is shown. In addition, the complaint, served by certified mail on the Respondent on October 28, affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint may be found true. Further, the undisputed allegations in the Motion for Default Judgment disclose that the Region, by letter dated November 17, notified the Respondent that unless an answer was received by November 24, a motion for default judgment would be filed. Thereafter, the Respondent neither filed an answer to the complaint nor requested an extension of time to do so.

In its response to the Board's Notice to Show Cause, the Respondent argues that the General Counsel's Motion for Default Judgment should not be granted. The Respondent states in its response that its failure to file a timely answer to the complaint was "the result of inadvertent inattention of counsel and in light of the substantive and factual issues which need to be addressed in this case." We find that the Respondent's explanations for its failure to file a timely answer do not constitute good cause, within the meaning of Section 102.20 of the Board's Rules and Regulations. "Inadvertent inattention of counsel" is not sufficient to establish good cause. See Electra-Cal Contractors, 339 NLRB 370, 370 (2003) and Associated Interior Contractors, 339 NLRB 18, 18 (2003). Further, the Respondent's claim that there are "substantive and factual issues which need to be addressed in this case" is also not sufficient to establish good cause. The Board has stated that it "will not address a respondent's assertion that it has a meritorious defense if good cause has not otherwise been demonstrated." Dong-A Daily North America, 332 NLRB 15, 16 (2000), citing Printing Methods, Inc., 289 NLRB 1231, 1232 fn. 4 (1988). Accordingly, we grant the General Counsel's Motion for Default Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in San Francisco, California, has been engaged in the business of providing courier services and court records research for law firms and other customers. During the calendar year ending December 31, 2003, the Respondent, in conducting its business operations in San Francisco, California, provided services valued in excess of $50,000 to 1st Republic Bank, Chicago Title and Trust, and First American Title Company, enterprises located within the State of California, each of which meets a Board standard for the assertion of jurisdiction on a direct basis. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that International Longshore and Warehouse Union, AFL–CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

[1] Unless otherwise stated, all dates are in 2004.

[2] While Member Schaumber endorses the view that it is preferable to decide cases on the merits, he finds that default judgment is appropriate here. This case does not implicate the position he expressed in Patrician Assisted Living Facility, 339 NLRB 1153, 1156–1161 (2003).

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act.

Christopher Snell	President
Andrew Brady	Vice-President
William Wheeler	Dispatcher
Pablo (last name unknown)	Office Clerical

On an unknown date in about mid-February 2003, the Respondent, by its vice president, Andrew Brady, interrogated employees about their union membership and activities and created an impression among its employees that their union activities were under surveillance by the Respondent.

On about March 31, 2003, the Respondent, by its president, Christopher Snell, informed its employees that it would be futile for them to select the Union as their bargaining representative by telling employees that it did not matter what the Union told them about their rights as employees because they were independent contractors, not employees.

On about April 15, 2003, the Respondent, by its office clerical, Pablo, engaged in surveillance of employees' union activities by videotaping a union demonstration.

On about November 22, 2002, employees Stacey Means and Aaron La Londe filed a wage claim against the Respondent with the California Division of Labor Standards Enforcement. On about March 31, 2003, employees Means, La Londe, John Harlow, and Sean Mosley, concertedly complained to the Respondent about the wages, hours, and working conditions of the Respondent's employees by presenting the Respondent with a petition complaining about employees' compensation and staffing levels. The Respondent discharged employees Means, Harlow, and Mosley on April 7, 2003, and employee La Londe on April 14, 2003. The Respondent engaged in this conduct because the employees formed, joined, and assisted the Union and engaged in the protected concerted activities described above, and to discourage employees from engaging in such activities or other protected concerted activities.

CONCLUSIONS OF LAW

1. By interrogating employees regarding their union membership and activities, by creating an impression among employees that their union activities were under surveillance, by informing employees that it would be futile for them to select the Union as their bargaining representative, and by engaging in surveillance of employees' union activities, the Respondent has interfered with, restrained, and coerced employees in the exercise of rights guaranteed them by Section 7 of the Act in violation of Section 8(a)(1) of the Act.

2. By discharging employees Stacey Means, John Harlow, Sean Mosley, and Aaron La Londe because they formed, joined, and assisted the Union and engaged in protected concerted activities, the Respondent has violated Section 8(a)(3) and (1) of the Act.

3. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Stacy Means, John Harlow, Sean Mosley, and Aaron La Londe, we shall order the Respondent to offer them full reinstatement to the positions they had or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. Further, we shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with F.W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful discharge of these individuals, and to notify them in writing that this has been done and that the discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Careful Courier Services, Inc., d/b/a King Courier, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union membership and activities.

(b) Creating an impression among employees that their union activities were under surveillance.

(c) Informing employees that it would be futile for them to select the Union as their bargaining representative.

(d) Engaging in surveillance of employees' union activities.

(e) Discharging or otherwise discriminating against employees because they engaged in union or other protected concerted activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Stacy Means, John Harlow, Sean Mosley, and Aaron La Londe immediate and full reinstatement to the same positions they had or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Stacy Means, John Harlow, Sean Mosley, and Aaron La Londe whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Stacy Means, John Harlow, Sean Mosley, and Aaron La Londe and, within 3 days thereafter, notify these employees in writing that this has been done, and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place to be designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in San Francisco, California, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 2003.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 4, 2005

Robert J. Battista , Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate employees about their union membership and activities.

WE WILL NOT create the impression among employees that their union activities are under surveillance.

WE WILL NOT inform employees that it would be futile for them to select the union as their bargaining representative.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT engage in surveillance of employees' union activities.

WE WILL NOT discharge employees because they engage in union or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Stacy Means, John Harlow, Sean Mosley, and Aaron La Londe immediate reinstatement to the same positions they had or, if those positions no longer exist, to substantially equivalent positions.

WE WILL make Stacy Means, John Harlow, Sean Mosley, and Aaron La Londe whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL remove from our files any and all references to the unlawful discharges of Stacy Means, John Harlow, Sean Mosley, and Aaron La Londe and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in anyway.

CAREFUL COURIER SERVICES, INC. D/B/A KING COURIER